

48A C.J.S. Judges § 21

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

C. Right and Title to Office; Determination of

§ 21. Determination of right to office invested in judiciary

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West's Key Number Digest

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The judiciary is invested with authority to try and determine the right of a judge to office.

The judiciary has authority to try and determine the right of a judge to office.¹ Generally, in the absence of some special statutory provision,² this right can be questioned only by the State,³ acting in proper proceedings for that purpose through its proper officers.⁴ The right of a judge to the office in which he or she functions may not be attacked collaterally.⁵ Ordinarily, quo warranto is the proper proceeding in which to test a judge's right to his or her office.⁶

An incumbent may sue to enjoin interference by a claimant to the office until title to the office is ascertained.⁷ Additionally, in jurisdictions in which the law and equity may be administered in the same proceeding, the question of title to the office may be determined in an injunction suit by the incumbent against the claimant.⁸ After the incumbent has stepped down from office, however, an injunction against his or her successor will not be granted.⁹

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Footnotes

¹ Tenn.—[Morrison v. Buttram](#), 154 Tenn. 679, 290 S.W. 399 (1926).

As to the right to a public office as a political or judicial question, see [C.J.S., Constitutional Law § 312](#).

² Wis.—[State ex rel. Heim v. Williams](#), 114 Wis. 402, 90 N.W. 452 (1902).

3 Ill.—*People ex rel. Jonas v. Schlaeger*, 381 Ill. 146, 45 N.E.2d 30 (1942).

Interest of citizen insufficient

The interest of a citizen as such and as a member of the bar of the United States Supreme Court is insufficient to invoke the court's judicial power to determine the validity of the appointment of associate justice of that court by the president and confirmation thereof by the Senate on grounds that the justice is ineligible under the Constitution and that there is no vacancy for which the appointment could lawfully be made.

U.S.—*Ex parte Levitt*, 302 U.S. 633, 58 S. Ct. 1, 82 L. Ed. 493 (1937).

4 R.I.—*State v. Storms*, 112 R.I. 454, 311 A.2d 567 (1973).

5 Tex.—*Orix Capital Markets, LLC v. American Realty Trust, Inc.*, 356 S.W.3d 748 (Tex. App. Dallas 2011), review denied, (Dec. 14, 2012).

N.Y.—*People v. Pokoik*, 83 Misc. 2d 669, 373 N.Y.S.2d 473 (J. Ct. 1975).

As to testing of right of a public officer to office by:

Certiorari, see C.J.S., *Certiorari* § 14.

Mandamus, see C.J.S., *Mandamus* § 266.

6 Tex.—*Scolaro v. State ex rel. Jones*, 1 S.W.3d 749 (Tex. App. Amarillo 1999).

As to quo warranto as proper proceeding in which to test a judge's right to his or her office, generally, see C.J.S., *Quo Warranto* § 13.

7 Tenn.—*Morrison v. Gower*, 154 Tenn. 624, 288 S.W. 731 (1926).

8 La.—*Guillory v. Jones*, 197 La. 165, 1 So. 2d 65 (1941).

9 Okla.—*Pinson v. Robertson*, 1946 OK 219, 197 Okla. 419, 172 P.2d 625 (1946).